IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6154 of 1997

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GOVINDBHAI KHEMCHAND LUHANA - Petitioner(s)

Versus

MANILAL RAMSINH NAYAK &3 - Respondent(s)

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Appearance :

MR KM PARIKH for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1,2.

MR ARUN H MEHTA for Respondent No(s).: 3.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 23/06/2005

ORAL JUDGMENT

1.By filing instant petition under Articles 226 and 227 of the Constitution, the petitioner seeks to challenge the order dated

3.5.1997 rendered in Misc. Motor Claim Application No. 258 of 1996 by the MACT (Aux.) Vadodara by which the application filed by the petitioner seeking condonation of delay of six years caused in filing the main claim petition has been rejected.

2. The accident in question took place on 30.11.1989 when the petitioner was travelling from Jarod to Vadodara. The petitioner filed the claim petition on 30.12.1996 to receive compensation as he has sustained injuries in the accident. The petitioner therefore filed the application for condonation of delay in filing the claim petition. The MACT (Aux.) Vadodara, vide order dated 3.5.1997 rejected the said application which has given rise to the present petition.

3. This Court has considered the sumissions advanced by Mr. KM Parikh, learned advocate for the petitioner and Mr. Arun H. Mehta, learned advoate for respondent No.3, perused the impugned order and statutory provisions contained in the Motor Vehicles Act, 1988 and the amended Act of 1994 and the judgment cited at the bar.

1. As per the averments made in the petition, there is no dispute that the accident had taken place on 30.11.1989. Therefore, the amended Motor Vehicles Act, 1988 which has come in force with effect from 1.7.1989 would be applicable for deciding the claim petition filed by the petitioner. As per the MV Act 1988 which has come in force with effect from 1.7.1989, the period of limitation for filing claim petition was six months from the date of the accident. However, in view of the proviso, the Tribunal may entertain the claim petition after expiry of six months but not later than twelve months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. Therefore, in view of the provisions MV Act, 1988 which has come in force with effect from 1.7.1989, obviously the petition filed by the petitioner was time barred.

2. It may be noted that the MV Act of 1988 has been again amended by Act No.54 of 1994 which has come in force from 14.11.1994 and by the amended Act, sub-section (3) of Section 166 of the MV Act has been omitted which prescribed period of limitation for filing the claim petition which was there in the MV Act of 1988 which has come in force with effect from 1.7.1989.

3. Therefore, the question that arises for consideration of this Court is as to whether the amendment made by Act No.54 of 1994

which has come in force with effect from 14.11.1994 is made retrospective in operation?

4. In this connection, it would be appropriate to refer to the judgment of the Supreme Court in the case of **Dhannalal v. Vijayvargiya &others**, reported in AIR 1996 SC 2155 = 1996 (2) GLH 459. In paragraphs 6 and 7 of the said reported decision, the Supreme Court has observed as under:

"*6. Before the scope of sub-section (3) of Section 166 of the Act is examined, it may be pointed out that the aforesaid sub-section (3) of Section 166 of the Act has been omitted by Section 53 of the Motor Vehicles (Amendment) Act, 1994 which came in force w.e.f. 14.11.1994. The effect of the Amending Act is that w.e.f. 14.11.1994 there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realised the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting their claim petitions only on ground of limitation. It is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident, of the bread earner of the family, in many cases such claimants are virtually on the streets. Even in cases where the victims escapes death some of such victims are hospitalised for months if not for years. In the present case itself the applicant claims that he met with the accident on 4.12.1990 and he was being treated as an indoor patient till 27.9.1991. According to us, in its wisdom the Parliament, rightly thought that prescribing a period of limitation and restricting the power of Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimants. The present case is a glaring example where the appellant has been deprived by the order of the High Court from claiming the compensation because of delay of only four days in preferring the claim petition.*

1. *In this background, now it has to be examined as to what is the effect of omission of sub-section (3) of Section 166 of the Act. From the Amending Act it does not appear that the said sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the Amending Act to show that benefit of deletion of sub-section (3) of Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of sub-section (3) from Section 166 of the Act can be tested by an illustration. Suppose an accident had taken place two years before 14.11.1994 when sub-section (3) was omitted from Section 166. For one reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of such accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when sub-section (3) of Section 166 was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of sub-section (3) of Section 166 w.e.f. 14.11.1994? According to us, the answer should be in negative. When sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground*

that such claim petitions were barred by time when sub-section (3) of Section 166 was in force. It need not be impressed that Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victims of the accidents and their heirs if the victims die."

1. In view of the clear elucidation of the Supreme Court in the above referred to judgment to the facts of the present case, it is clear that by Amendment Act No.54 of 1994 which has come in force from 14.11.1994 by which sub-section (3) of Section 166 of the MV Act prescribing the period of limitation for filing claim petition in the MV Act 1988 which has come in force from 1.7.1989 came to be deleted and the said amendment Act No.54 of 1994 which has in force from 14.11.1994 will govern all the pending petitions before the Tribunals. So far as the limitation is concerned, in view of the amendment there is no period of limitation in filing claim petition under the MV Act.
2. In aforesaid view of the matter, the impugned order dated 3.5.1997 passed by the MACT (Aux.) Vadodara rejecting the Misc. Civil Application No. 258 of 1996 filed by the petitioner seeking condonation of delay is hereby quashed and set aside. In fact, the application seeking condonation of delay itself was not necessary to be filed and it was uncalled for in view of the clear elucidation of the Supreme Court in the above referred to judgment.
3. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The order dated 3.5.1997 passed by the learned MACT (Aux.) Vadodara rejecting the Misc. Civil Application No. 258 of 1996 filed by the petitioner seeking condonation of delay is quashed and set aside. The Tribunal is hereby directed to entertain the main claim petition filed by the petitioner and dispose of the same on merits as early as possible and in accordance with law. Since the accident had taken place on 30.11.1989 the Tribunal shall give top priority to the said claim petition and shall try to dispose of the same as early as possible and preferably within one year hereof. Rule is made absolute.

Direct service is permitted.

(A.M. Kapadia, J.)

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